

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. MC-F-21008

EAST WEST RESORT TRANSPORTATION, LLC,
AND TMS, LLC, d/b/a
COLORADO MOUNTAIN EXPRESS
-PETITION FOR DECLARATORY ORDER-
MOTOR CARRIER TRANSPORTATION OF PASSENGERS IN COLORADO

COLORADO PUBLIC UTILITIES COMMISSION'S
FIRST PETITION FOR ISSUANCE OF SUBPOENA TO APPEAR AT DEPOSITION
AND PRODUCE DOCUMENTS

David A. Beckett
Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5135

Attorneys for The Public Utilities Commission of
the State of Colorado

Dated: May 25, 2005

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The Public Utilities Commission of the State of Colorado ("CPUC"), by and through the Colorado Attorney General, hereby petitions the Board for issuance of two subpoenas to appear at deposition and to produce documents. CPUC requests that the subpoenas be addressed to the persons identified below. CPUC makes this request in connection with 49 C.F.R. § 1113.2 and §§ 1114.22-25.

As good cause for issuing the subpoena, CPUC states as follows:

1. CPUC is requesting one subpoena be issued to Mr. Christopher Jarnot, Vice President for Marketing and Sales, Vail Resorts Management Company.

2. CPUC is requesting one subpoena be issued to Ms. Susan Rubin-Stewart, Director of Reservations, Vail Resorts Management Company.

3. The subpoenas relate to depositions that have been prearranged by the undersigned through telephone conversations with Mr. Jarnot. The deposition of Mr. Jarnot is scheduled for 9:00 a.m., June 2, 2005. The deposition of Ms. Rubin-Stewart is scheduled for 1:00 p.m., June 2, 2005. The depositions shall take place at the offices of Vail Resorts Management Company located at 137 Benchmark Road, Avon, Colorado 81260.

4. Vail Resorts Management Company is one of three unaffiliated third parties that has provided evidence in this matter. Such evidence is set forth in the September 21, 2004 Verified Statement of Christopher Jarnot that is included as part of the September 24, 2004 Petition for Declaratory Order filed by East West Resort Transportation, LLC and TMS, LLC d/b/a Colorado Mountain Express ("CME").

5. Vail Resorts Management Company is not regulated by the United States Surface Transportation Board or the CPUC. Vail Resorts Management Company is a company that has, may have, had or may have had a contract or agreement with CME. Further, during 2003, Vail Resorts Management Company appears to have booked as many as 20,115 guest seats on CME's scheduled shuttle service. The purpose of the requested subpoenas is at least the following: (1) to obtain a more thorough understanding of the representations made in Mr. Jarnot's September 21, 2004 Verified Statement; (2) to obtain and review the business records of Vail Resorts Management Company that document the 20,115 guest seats referred to in Mr. Jarnot's September 21, 2004 Verified Statement; and (3)

to elicit sworn testimony regarding the process that led up to the preparation of Mr. Jarnot's September 21, 2004 Verified Statement.

6. Mr. Jarnot has indicated to CPUC the willingness of both himself and of Ms Rubin-Stewart to appear at the taking of a deposition on June 2, 2005 and to produce the requested documents, but only in response to a subpoena. Thus, the subpoenas are necessary to assure the appearance of each deponent to testify at the taking of the scheduled deposition and to produce the requested documents.

7. Vail Resorts Management Company possesses information that would not otherwise be available to CPUC absent their individual testimonies and absent a subpoena to each. Further, the attached description of documents to be produced states specifically the documents and business records that CPUC seeks, which documents and business records are integral to the threshold question of the substantiality of 2003 CME's regularly scheduled interstate shuttle services.

8. As a result of CPUC April 1, 2005 Motion for Extension of Time and the Board's partial grant of that motion by decision served April 8, 2005, the Board understood that CPUC desired to conduct discovery of those persons and entities that provided verified statements to CME's petition for declaratory order. The subpoenas sought by this petition flow directly from CPUC's previously approved request to conduct discovery.

9. To the extent the requested documents, or any part of them, are claimed to be confidential or proprietary, and are so marked by Vail Resorts Management Company, they

will be treated as confidential or proprietary material in accordance with the protective order that was served in this proceeding on May 19, 2005.

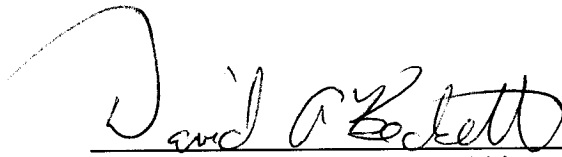
10. A copy of this petition and description of documents to be produced was served on CME. Copies of this petition and description of documents have also been sent to Mr. Jarnot and Ms. Rubin-Stewart.

11. If issued, one subpoena to testify at the taking of a deposition and to produce documents should be addressed to Mr. Christopher Jarnot, Vice President for Marketing and Sales, Vail Resorts Management Company, P.O. Box 7, Vail, CO 81658 and/or the street address of 137 Benchmark Road, Avon, Colorado 81260. The other subpoena to testify at the taking of a deposition and to produce documents should be addressed to Ms. Susan Rubin-Stewart, Director of Reservations, Vail Resorts Management Company, P.O. Box 7, Vail, CO 81658 and/or the street address of 137 Benchmark Road, Avon, Colorado 81260. Each subpoena is returnable on June 2, 2005, the agreed- upon date of the depositions.

WHEREFORE, CPUC respectfully requests the Board to issue the subpoenas addressed to Mr. Christopher Jarnot and Ms. Susan Rubin-Stewart, both of Vail Resorts Management Company, and include the attached description of documents to be produced.

Dated this 25th day of May, 2005.

JOHN W. SUTHERS
Attorney General

A handwritten signature in dark ink, appearing to read "David A. Beckett", is written over a horizontal line.

DAVID A. BECKETT, 23098*
Assistant Attorney General
Business and Licensing Section

Attorneys for the Public Utilities Commission of
the State of Colorado

1525 Sherman Street, 5th Floor
Denver, CO 80203
Telephone: (303) 866-5135
Fax: (303) 866-5395
*Counsel of Record

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DESCRIPTION OF DOCUMENTS TO BE PRODUCED
IN RESPONSE TO THE SUBPOENA DUCES TECUM

- a) Each business record of Vail Resorts Management Company supporting its belief that Vail Resorts Management Company sold 20,115 guest seats on CME's 2003 scheduled shuttle service. To the extent available, the records should identify the name of the customer/passenger, the date(s) CME provided ground transportation, the scheduled route of the van service (e.g., Denver International Airport to Vail, Eagle County Regional Airport to Vail, etc.), whether the customer/passenger acquired airline tickets directly from Vail Resorts Management Company as part of a multi-element travel package, whether the customer/passenger acquired any non-air travel components (e.g., lodging, lift tickets, etc.) directly from Vail Resorts Management Company as part of a multi-element travel package, and the pertinent flight number and arrival/departure information.
- b) Each letter, electronic mail message, memorandum, note or other document (including any underlying supporting documents) received in 2004 or 2005 by Vail Resorts Management Company from CME related to CME's 2003 scheduled ground transportation services. This request includes, but is not limited to, documents received for the purpose of assisting Vail Resorts Management Company to determine the number of CME passengers it booked on CME's 2003 scheduled shuttle service.
- c) Each letter, electronic mail message, memorandum, note or other document (including any underlying supporting documents) sent in 2004 or 2005 by Vail Resorts Management Company to CME related to CME's 2003 scheduled shuttle service.
- d) To the extent not already produced, each record of Vail Resort Management Company referred to in paragraph 1 of Christopher Jarnot's verified statement of September 21, 2004, which statement is part of CME's Petition for Declaratory Order in United States Surface Transportation Board Docket No. MC-F-21008.
- e) To the extent not already produced, each record of CME referred to in paragraph 1 of Christopher Jarnot's verified statement of September 21, 2004, which statement is part of CME's Petition for Declaratory Order in United States Surface Transportation Board Docket No. MC-F-21008.

Vail Resorts Management Company may produce these business records and other documents in an electronic format on CD-ROM. If provided on a CD-ROM, please provide the business records in executable format in Microsoft Word or Microsoft Excel or other standard software. Provision of electronic business records in Adobe Acrobat format is acceptable when no standard, executable software version exists (e.g., for documents that must be scanned and not for documents or computer files that have been printed to PDF).

For purposes of the above description of documents, the term "CME" means the scheduled intercity shuttle van service operated by East West Resort Transportation, LLC and TMS, LLC, d/b/a Colorado Mountain Express, as well as its affiliates, employees, agents, contractors, attorneys, and any other representative of East West Resort Transportation, LLC and TMS, LLC, d/b/a Colorado Mountain Express. It does not include charter and special operations that operate under the name of CME Premier.

CERTIFICATE OF SERVICE

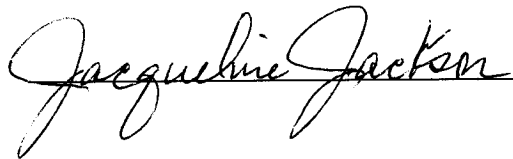
This is to certify that I have duly served the within COLORADO PUBLIC UTILITIES COMMISSION'S FIRST PETITION FOR ISSUANCE OF SUBPOENA TO APPEAR AT DEPOSITION AND PRODUCE DOCUMENTS upon all parties herein by electronic mail and depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 25th day of May, 2005, addressed as follows:

Thomas J. Burke Jr.
Jones & Keller
1625 Broadway, Suite 1600
Denver, CO 80202

Fritz R. Kahn
Fritz R. Kahn P.C.
1920 N Street NW 8TH Floor
Washington, DC 20036-1601

Christopher Jarnot
Vice President for Marketing and Sales
Vail Resorts Management Company
P.O. Box 7
Vail, CO 80128

Susan Rubin-Stewart
Director of Reservations
Vail Resorts Management Company
P.O. Box 7
Vail, CO 80128

A handwritten signature in cursive script, reading "Jacqueline Jackson". The signature is written in black ink and is positioned centrally below the two columns of recipient addresses.